

LAMBDA LEGAL

Impact

A portrait of a woman with long, straight, reddish-brown hair, wearing a black top and a necklace with purple and blue beads. She is looking directly at the camera with a serious expression. The background is a plain, light-colored wall.

30

YEARS

INTO THE HIV EPIDEMIC,
WE'RE STILL BATTLING

SILENCE

DENIAL AND BIGOTRY

PLUS:

Atlanta Bar Patrons Get Justice
Iowa's Courts Under Attack
5 Documents You Need Now

Lambda Legal client
Melody Rose was refused
surgery because she has HIV.



Lambda Legal
making the case for equality

WINTER 2011

THE 30 YEARS' WAR



KEVIN M. CATHCART

AIDS IS STILL A GLOBAL CATASTROPHE, IN LARGE PART BECAUSE OF THE HIGH WALLS OF IGNORANCE, STIGMA AND SILENCE THAT SURROUND IT

IT IS HARD TO KNOW WHAT TO DO

with the knowledge that we are about to reach the 30th anniversary of the Center for Disease Control's first report of what would come to be called AIDS.

We remember all those we have lost, celebrate the advances in treatment that keep many of our friends alive, and cheer the legal victories that fight discrimination. But how should we feel about the challenges that remain? Should we boil over with anger that so many died—and are still dying—so young? That in this country men who have sex with men, particularly in communities of color, still get HIV at alarming rates? That more than 33 million people live with HIV worldwide? That ignorance and discrimination still surround HIV? That we have not gotten our government or any other to act strongly enough to try to end the epidemic?

Should we fight the frustration that comes from watching the LGBT civil rights movement move further away from HIV-related work every year, despite the epidemic's overwhelming impact on our communities?

I have all of these reactions, all at the same time. Plus the questions: How many more people will die in the coming year? How many more will be infected? What can we do to turn this around?

In the early 80's I was a law student in Boston, active in gay community politics, when we first heard of the disease—at first without a name, then called GRID, finally AIDS. In the beginning we heard stories from New York and California and it felt—falsely—like there was some distance. But by the end of 1982 HIV was part of life for gay men in New England in ways we could not deny.

I started doing LGBT civil rights work full time at Gay & Lesbian Advocates & Defenders (GLAD) in 1984, which already had an AIDS Law Project, run pro bono by my good friend Steve Ansolabehere. By then Lambda Legal had already successfully litigated the first AIDS discrimination case in the country, in 1983, defending a doctor who treated people with AIDS when the co-op building where he had his office tried to evict him to keep people with the disease from coming into its lobby.

At GLAD we saw a steady stream of employment discrimination, denial of medical and dental care, and insurance issues. We tried to address ignorance and fear that often bordered on hysteria. In those days, before the HIV test or any truly useful treatments, no one knew who would get sick next. Steve was diagnosed with a rare form of avian tuberculosis in 1985. The hospital made us wear masks to visit him because there was no way to know whose immune system was compromised and whose wasn't. Two years later, I sat with him in the hospital and held his hand while he died. Every gay man of my generation has stories like this to tell. To those who are young enough to have missed this: Count your blessings. And use condoms.

Decades later, despite far greater understanding of the virus and a range of treatments, AIDS is still a global catastrophe, in large part because of the high walls of ignorance, stigma and silence—not to mention homophobia, racism, and the lack of access to care for low-income people—that surround it.

When the epidemic began, we at Lambda Legal amended our mission statement to explicitly include people with HIV and created our HIV Project, because the legal needs have always been—and continue to be—enormous (see "Positive History," page 10). In April, we filed a friend-of-the-court brief in the case of a man who allegedly bit his neighbor and was charged with violating a Michigan bioterrorism statute (the bioterrorism charge was thrown out). Last September, we reached a settlement in the case of Dr. Robert Franke, a retired minister and university provost kicked out of an assisted-living facility because he had HIV. And last month, we reached a resolution in our lawsuit on behalf of Melody Rose, a Wisconsin woman refused surgery because of her HIV status. Scientific consensus has long held that the risk of transmitting HIV from biting, delivering medical care or living with someone with HIV is virtually nil. "Victories" like these are resounding proof that an anniversary like this can't be celebrated. It calls for redoubled action by all of us.

A handwritten signature in blue ink that reads "Kevin M. Cathcart". The signature is fluid and cursive, with a large initial 'K'.

Kevin M. Cathcart, Executive Director
Frances J. Goldstein, Deputy Director

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(Last updated January 2011)

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ON THE COVER

With Lambda Legal's help, *Melody Rose*, refused surgery because of her HIV status, fought back against discrimination. **PAGE 4**



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Lambda Legal is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and those with HIV through impact litigation, education and public policy work.

CIVIL UNIONS FOR ILLINOIS

ILLINOIS HAS JOINED THE GROWING LIST OF STATES EXTENDING BROAD LEGAL PROTECTIONS TO SAME-SEX COUPLES.

The Religious Freedom Protection and Civil Unions Act was first introduced by Representative Greg Harris in March 2007, and in the Illinois Senate by David Koehler. After passionate speeches and floor debate in both chambers, the bill passed 61-52 in the House on November 30 and 32-24 in the Senate the next day. Governor Pat Quinn is expected to sign the bill in January 2011 and it will go into effect June 1. Lambda Legal's Midwest Regional Office, based in Chicago, provided extensive legal analysis and drafting assistance for the act as well as public education and legislative advocacy pressing for its passage.

A couple who enters into an Illinois civil union will have access to the rights, benefits and responsibilities that married couples have. The major benefits of the new law include hospital visitation, health care decision-making rights, the spousal presumption of parentage for families rearing children, and joint filing of state income taxes.

In addition, couples married in any jurisdiction that legally marries same-sex couples will be recognized as civil union partners in Illinois. Couples who have a civil union from New Jersey or a similarly broad status like domestic partnerships in Oregon, Washington, Nevada and California will also be recognized as having a civil union in Illinois. However, Wisconsin, a border state to Illinois, has a more limited domestic partnership law (see "On the Defensive," page 13) and a Wisconsin domestic partnership therefore is unlikely to be treated as a civil union in Illinois.

The law benefits married Iowa couples who commute or travel to Illinois for work. In fact, depending upon the couple's individual circumstances it may be advantageous for same-sex Illinois couples to wed in a state where they can do so and return to Illinois where their marriage will be respected as a civil union.
—Jim Bennett, Regional Director, Midwest Regional Office



Jim Bennett, Regional Director of Lambda Legal's Midwest Regional Office and Illinois State Rep. Greg Harris celebrate the passage of the civil union bill at the State Capitol in Springfield.



CHECK OUR FAQ AT www.lambdalegal.org/illinois-civil-unions-faq or call our Help Desk in Chicago at 312-663-4413.

WHAT YOU'RE SAYING

RE: LAMBDA LEGAL'S NAUGHTY V NICE CAMPAIGN
via Facebook

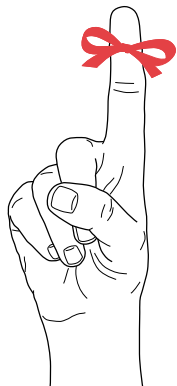
CAMPBELLDE: @lambdalegal #lInice Everyone who came out publicly this year and every queer who refused to be silenced.

RE: DADT REPEAL
via Facebook

K.J. BEARD: As a veteran of the Navy that was discharged under DADT, I am very happy with the repeal of this obviously discriminatory practice.

RE: ILLINOIS CIVIL UNIONS
via Facebook

JAMES CLEMENS: It is great! May all remaining states wise up and realize it is time to STOP denying equal rights for ALL.



SAVE THE DATE!

FEBRUARY	MARCH	APRIL	MAY
<p>8 Lambda Legal Freedom to Marry Reception National Museum of Mexican Art Chicago</p> <p>27 TransAction! Day</p>	<p>8 Lambda Legal's Spring Theater Event: Priscilla Queen of the Desert The Palace Theater New York City</p> <p>13-14 Pride South Florida Ft. Lauderdale, FL</p> <p>27 Lambda Legal in Ft. Lauderdale Bonnet House Museum and Gardens Ft. Lauderdale, FL</p> <p>28 Jeffrey Fashion Cares Benefit The Intrepid, Pier 86 New York City</p>	<p>15 National Day of Silence</p> <p>16-17 Miami Beach Pride</p> <p>21 Lambda Legal's San Francisco Celebration The Four Seasons Hotel San Francisco</p> <p>24-30 Philadelphia Black Pride</p> <p>28 Lambda Legal's Annual Bon Foster Gala The Spertus Institute Chicago</p>	<p>2 Liberty Awards National Dinner Pier 60, Chelsea Piers New York City</p> <p>17 International Day Against Homophobia and Transphobia</p> <p>22 Harvey Milk Day</p> <p>26-29 DC Black Pride</p>

FOR MORE INFORMATION ON LAMBDA LEGAL EVENTS, VISIT www.lambdalegal.org/events

WISCONSIN

JUSTICE FOR WOMAN DENIED SURGERY

Lambda Legal and the AIDS Resource Center of Wisconsin (ACRW) announced in December the resolution of their lawsuit on behalf of a woman living with HIV who was denied surgery. In 2008, **Melody Rose** (right), sought treatment for her gallbladder disease from Dr. Steven M. Cahee at the Fond du Lac Clinic in Wisconsin. Cahee, however, refused to remove her gallbladder, citing concerns for his own health, despite widespread scientific consensus that the risk of transmission in such a situation is almost zero. A few months later, a surgeon at a different facility performed the necessary procedure. Subsequently, Lambda Legal sued Dr. Cahee, his employer, and Agnesian Healthcare, the operator of the clinic, in federal court under various federal and state antidiscrimination statutes. In July 2010, the court denied the defendants' motions for summary judgment and set the case for trial in late November.

"Ms. Rose is pleased that this lawsuit has been resolved," said Staff Attorney Scott Schoettes, who was recently appointed director of Lambda Legal's HIV Project. "This lawsuit put doctors everywhere on notice: You don't get a free pass to discriminate based on unsubstantiated fears regarding the transmission of HIV."



NEW YORK

FEDS BACK SCHOOL ANTIBULLYING CASE

The Justice Department has filed a friend-of-the-court brief supporting *Pratt v. Indian River Central School District*, Lambda Legal's federal lawsuit against an upstate New York school district. Teachers and officials turned their backs as student **Charlie Pratt** (left) suffered years of relentless antigay and sexist harassment. "School officials have a legal duty to protect their students, and it's time for them to live up to that responsibility," said Senior Staff Attorney Thomas W. Ude Jr. "We are pleased to see that the Department of Justice agrees that a school district does not escape liability for its inaction because of school vacations and summer recess—which, unbelievably, is what this school district argues."

CALIFORNIA

LEGAL COALITION DEMANDS HIV PRIVACY

Lambda Legal continues to demand an explanation from state officials regarding a drastic breach of privacy that affected some 5,000 Californians living with HIV. The Department of Health Care Services released their names to a third-party provider between February and December 2009. In September 2010, Lambda Legal, the ACLU of Northern California and the HIV & AIDS Legal Services Alliance demanded that the agency act immediately to protect the confidentiality of HIV patients, or face further steps that may include legal action. "The state's actions are unacceptable and illegal," said Staff Attorney Peter Renn. "And they affect everyone, because when people do not have confidence that their privacy will be respected, they may choose not to seek testing or medical care."



MERRILL LYNCH WEALTH MANAGEMENT IS PROUD TO BE A NATIONAL CORPORATE SPONSOR OF LAMBDA LEGAL.

Merrill Lynch Wealth Management is one of the top national corporate sponsors of Lambda Legal. As a national sponsor of Lambda Legal, Merrill Lynch has assembled a dedicated team of financial advisers to help educate the LGBT community on the financial issues that arise in domestic partnerships, civil unions and marriage. The members of the LGBT Financial Team, with this in mind, offer individual strategies and solutions tailored to meet these unique needs. To help you locate an adviser near you, please call 1-877-MER-LGBT or visit www.totalmerrill.com/domesticpartners.



AMERICAN AIRLINES IS THE OFFICIAL AIRLINE OF LAMBDA LEGAL.

As a Lambda Legal member, you can help and support Lambda Legal every time you travel on American Airlines, at no cost to you! It is very simple. When booking on www.AA.com/rainbow, simply enter **541544** at the bottom of the Enter Passenger Details section, in the field for Business ExtrAA Account Number.



STAY UP TO DATE!

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Ask Lambda Legal

Our attorneys field your questions on the issues that matter to you most.



Power of attorney and other documents can help couples navigate the health care maze.

Q I was excited to read about the new Department of Health and Human Services regulations directing hospitals to allow gay and lesbian partners visitation rights. So if my partner is hospitalized, they'll let me in, right?

A We wish it were that simple. The President issued his order after Lambda Legal client Janice Langbehn was denied access to her dying partner at a Florida hospital even though they had done all the power of attorney paperwork. However, having the proper paperwork has been

a lifesaver for other couples (see "Power on Paper," below). We strongly urge couples to have the following:

A *living will* tells medical professionals and your advocates what you want to happen if you need certain medical intervention to stay alive.

A *health care proxy* (also known as a *durable power of attorney for health care*) is a document you sign to make sure that the right person makes medical decisions for you when you can't make them yourself, and that clarifies your wishes about key health care decisions that could become necessary.

A *financial power of attorney* is used to appoint someone you trust to take care of things like paying bills if you can't do it yourself.

A *funeral directive/disposition of remains* lists your instructions for any funeral arrangements, including who should be in charge, and for what to do with your body.

A *will* is a legal document which sets out the way you want your possessions to be distributed after you die. When you don't have a will, you die "intestate," which means state law dictates how your property will be distributed—and often your same-sex partner and other people you care about will not be on the state's list.

Another thing to think about, depending on your circumstances: If you and your same-sex partner are raising children together and you both want to be recognized as parents, especially in a health care setting, it is very important to confirm the relationship legally through *second/step-parent adoption* or other means such as *co-parenting or guardianship agreements*. Be sure to designate a guardian and a backup guardian for your children in your will and other documents in the event that you are not able to care for them yourself. —*Judi O'Kelley, Director of Life Planning*

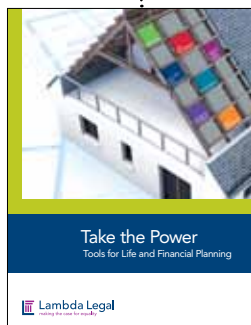


IF YOU HAVE QUESTION FOR LAMBDA LEGAL ATTORNEYS

contact Lambda Legal's Help Desk at www.lambdalegal.org/help/online-form or call us toll free at 1-866-542-8336.

POWER ON PAPER

When **Cindy Meneghin** (right, second from right), a plaintiff in Lambda Legal's New Jersey marriage case, was rushed to the emergency room with meningitis, hospital staff at first ignored her partner of 30 years, **Maureen Kilian** (right, second from left). Terrified of losing consciousness without her partner in charge of medical decisions, Cindy yelled, "She's my partner!" several times. But that didn't work, so she screamed, "She has my power of attorney!" That worked like a charm.



FOR MORE INFORMATION on how to protect yourself and your partner, visit www.lambdalegal.org/take-the-power.



Family Ties

Lambda Legal client Rita Goodman talks about her battle to regain custody of her children.

It's a possibility most parents dread: After their 10-year relationship ended, Rita Goodman's ex-partner, Siobhan LaPiana, began to restrict Goodman's access to their two sons. Despite the couple signing a parenting agreement, LaPiana's lawyers argued that shared custody would violate Ohio's antigay constitutional amendment. With Lambda Legal's help, Goodman fought back.

It started in Paris. We were both there on scholarships. Siobhan was in comparative literature and I was in art history. Eventually, I got a job in Cleveland, where I continue to work now. She came to Cleveland, and that's when we decided to have our first child, Solomon. Jack was born three years later. Siobhan carried the children and we used an anonymous donor we selected to match my background and characteristics.

Solomon was four and a half and Jack one and a half when we split up. I continued to see my boys and we were pretty much splitting the time. But then there came an email indicating that things would need to change. It was really scary.

I knew the law made things challenging for me as a parent in Ohio because I had no genetic connection to my children. A second parent adoption wasn't an option for me.

I cried the day I went into court and had to put my family and my friends on the stand.

You don't want to feel the anger and the frustration and the sorrow. It's such a mishmash of emotions. But I couldn't give up, because I love these kids and they matter to me and I know that I matter to them. I simply was not willing to say I'm no longer a parent. I wasn't going to just turn my back on my kids.

In 2008, the trial court ordered shared custody, but Siobhan decided to appeal. By the time they were going to file, I was pretty tapped out in terms of

funds. It cost me a small fortune to bring the case that far. With the money we both spent on lawyers, we could have sent our kids—at least one of them—to college. Sad fact.

I also started to feel like, whatever happens, let this benefit somebody else besides myself. Let this be a case that can help some other people in my situation in the future. And for all those reasons it seemed logical to approach Lambda Legal with my case.

The day the appeals court decision came down this past August, I was at the pool with the boys. My mother was visiting. We came back and there was a message on my answering machine saying that the appeals court had upheld the order of shared custody. I was just stunned.

I can't say I felt exhilarated, because I never felt this was something to be won. It's more like I was fighting just to barely hold on. Even to this day, I feel like there's a sword of Damocles dangling over my head. She didn't appeal the case any further, and it's too late to appeal anymore. But every now and then I feel like I have to look over my shoulder.

I don't understand why the laws are not changing more quickly to protect children and children's relationships with their parents. When it comes right down to it, when you're taking care of a child all the time, you have a bond with that child regardless of whether you have a blood tie or not. Love is love. They get loved just the same, get raised and taught how to ride a bike and read to and tucked in just the same.

We need to get the word out that until the laws change, you need to protect yourself. Even if you think you're in a long-term relationship and it's great, you have to be realistic. You have to get your head out of la-la land and realize that things can happen and relationships can change. Everybody who is a non-biological parent and loves their kids needs to protect that relationship by going to a lawyer and doing the maximum you can do where you live. **L**



FOR MORE ON THE CASE, VISIT
www.lambdalegal.org/in-re-sjl-and-jkl

I COULDN'T GIVE UP, BECAUSE I LOVE THESE KIDS. I SIMPLY WAS NOT WILLING TO SAY I'M NO LONGER A PARENT.



Rita Goodman at home in Cleveland

A Southern Comfort

Atlanta Eagle patrons mistreated by police finally get justice.

By Jorge Morales, Content Editor/Producer



Lambda Legal Staff Attorney Beth Littrell (center) flanked by plaintiffs David Thomas (left) and Thom Hayes.

IN DECEMBER, ATLANTA GAY BAR customers subjected to unlawful police treatment were vindicated when the Atlanta Police Department announced it would overhaul search and seizure and arrest policies, and the city of Atlanta would pay \$1,025,000 in damages.

The settlement was the result of *Calhoun v. Pennington*, a suit which Lambda Legal launched with co-counsel Dan Grossman and the Southern Center for Human Rights in November 2009 against the city of Atlanta and 35 police personnel. Officers had forced customers to lie on the floor, some in spilled beer and broken glass, while they searched them, conducted background checks and hurled antigay slurs during an unwarranted raid in which no one was arrested or charged.

"It made me feel dehumanized," said plaintiff Mark Danak, an IT specialist who attended the Eagle after weekly rehearsals with the Atlanta Gay Men's Chorus. "To have them come in and humiliate us like that for no reason was just wrong. It made us feel like second-class citizens."

A federal judge found that the plaintiffs were unlawfully searched, detained and arrested during the raid and that none was personally

suspected of any criminal activity. Danak hopes the victory sends a message to law enforcement throughout the country: "Don't target any group just because they're different. And treat people with respect."

"Memo to government: Cut it out," wrote Education and Public Affairs Director Leslie Gabel-Brett in a *Huffington Post* column about the significance of this case. "When ordinary folks, whether LGBT or not, stop by a bar to meet people and have a drink, they should not be afraid that their town or city police force will send officers to burst in on them, terrorize and insult them, and force them to lie on the floor without a valid reason. That's unfair and unconstitutional."

Another plaintiff, Iraq war veteran Chris Daniels, said following the settlement, "I hope this never happens again to anyone."

"Because our clients stood up against the injustice done to them, the Atlanta Police Department will be a better force for good in the community," said Supervising Senior Staff Attorney Greg Nevins. "Nobody should have to endure the inexcusable law enforcement conduct that occurred at the Atlanta Eagle." **L**



"I HOPE THIS NEVER HAPPENS AGAIN TO ANYONE."

—Chris Daniels, plaintiff



FOR MORE ON THE CALHOUN V PENNINGTON CASE, PLEASE VISIT:
www.lambdalegal.org/calhoun-v-pennington

Crisis in Court

The result of the judicial retention election in Iowa is a grim reminder of how important it is to defend fair courts.

By Camilla Taylor, Senior Staff Attorney

THE NOVEMBER ELECTIONS DEALT fair courts quite a blow in Iowa. Three well-respected Iowa Supreme Court Justices lost retention elections after antigay groups targeted them because of the Court's unanimous 2009 decision to strike down Iowa's ban on marriage for same-sex couples.

The loss of the justices had no impact on marriage equality in Iowa; the Court's ruling in *Varnum v. Brien* is still the law of the land, and more same-sex couples marry every day. Antigay groups knew this, but they spent almost \$1 million on a campaign to oust the justices in a spiteful gesture designed to intimidate judges in Iowa and across the nation, and to scare lesbians and gay men out of bringing discrimination claims to court.

Since the Iowa election, opponents of equality for gay and lesbian couples around the country have exulted in the ouster of the three justices and signaled their intention to target courts again in future elections. David Barton, a Texas antigay activist, crowed, "This is what we call hanging a bloody scalp on the gallery rail." Judges and courts nationwide have become magnets for an alarming outpouring of misguided rage, a politicization of the judicial process that even mainstream elected officials are embracing. The U.S. Senate now has blocked or impeded the confirmation of so many federal judges that legal professionals from all perspectives have declared a crisis.

Make no mistake: The Iowa election had nothing to do with the competence or ideology of the individual judges voted out. The three native Iowans—Chief Justice Marsha Ternus, Justice Michael Streit, and Justice David Baker—are skilled jurists known more for their long years of steady service on the bench than for adherence to any particular ideology. Two were appointed by Republican governors.

The campaign in Iowa is part of a larger movement nationwide by antigay groups to tear down equal treatment of LGBT people wherever it occurs and by whatever means they can find. The anti-judge activists who toured the state during the

campaign represented some of the same groups whose appeals were rejected by the U.S. Supreme Court earlier last year when they tried to conceal the names of supporters who signed an antigay ballot measure in Washington State by making false claims that they were fearful of retribution. Carolyn Jenison, the director of One Iowa, the statewide LGBT equality group, called the results of the Iowa election a "perfect storm of electoral discontent and out-of-state special interest money."

The impact of Iowa's judicial election goes way beyond the justices themselves and this particular election cycle. Antigay extremists are undermining the system of checks and balances that has served us for over 200 years, and targeting the constitutional guarantee of equality itself. If the right to equal protection means anything, it means that courts are empowered to strike down a piece of legislation—regardless of whether it enjoys majority support—when that legislation targets a minority for unequal treatment. Indeed, it is the absolute obligation of a court to do so. If courts are not insulated from voters who disagree with one decision or another, then majorities will have the power to strip fundamental rights away from minorities. As retired United States Supreme

Court Justice Sandra Day O'Connor has noted, "a judge who is forced to weigh what is popular rather than focusing solely on what the law demands" loses "independence and impartiality."

What's next for Iowa? While the November election results have diminished the number of political officeholders who support equality, a constitutional amendment continues to appear unlikely in the state. Newly empowered antigay groups will lobby the newly elected Republican Iowa House to insist upon passage of a constitutional amendment. But amending the Iowa constitution requires a vote in both chambers of the legislature, and Senate Majority Leader Mike Gronstal stands firm against passage, saying, "What's ugly is giving up what you believe in, that everybody has the same rights. Giving up on that? That's ugly."

Nonetheless, the spiteful campaign against Iowa's justices was a wake-up call for all of us. The next time extremists set out to try and punish judges for deciding cases with integrity, we'll be ready. **L**



SUPPORT FAIR COURTS BY VISITING OUR WEBSITE AT:
www.lambdalegal.org/impact-iowa-judges



Antigay groups targeted three Iowa Supreme Court justices.

POSITIVE HISTORY

Three decades later, the mistreatment of people with HIV continues, challenging Lambda Legal and other advocates to find new strategies for dealing with some frustratingly familiar problems.

BY SALLY CHEW

IT WAS A STORY THAT SEEMED RIGHT OUT OF THE

1980S: When Dr. Robert Franke was evicted in 2009 from a Little Rock, Ark., assisted living facility just for having HIV, it felt like the old days—before the HIV civil rights battles, before the public health campaigns, before all the medical breakthroughs. Thirty years into the epidemic, how could the most basic information about the virus’s transmission have eluded a retirement community promising “round-the-clock care”? How was it possible that people were still being kicked into the street for their HIV status?



Indeed, Lambda Legal's representation of Dr. Franke, in a lawsuit that settled out of court last year (see "Senior Moment," page 12), resonated all the way back to Lambda Legal's involvement in the very first HIV lawsuit, in 1983—*People v. West 12 Tenants Corp.*—in which we represented a New York City doctor whose coop board tried to evict

him because he was treating people with HIV (see "The First Case," right).

THE MORE THINGS CHANGE...

The truth is that gaining ground in the battle against HIV stigma and misinformation has been shockingly slow: In a 2009 Kaiser Family Foundation survey, one out of three U.S. respondents was under the misconception that HIV could be transmitted through a drinking glass, toilet seat or swimming pool. And there is no doubt that irrational fear of HIV like this fuels the kind of HIV discrimination that continues to require Lambda Legal's intervention in court (to download Lambda Legal's *Report on HIV Stigma and Discrimination*, see page 12).

Despite these persistent misconceptions, impact litigation against HIV discrimination nonetheless is producing better outcomes and continuing to set important precedents, especially under the Americans with Disabilities Act and various other laws protecting against discrimination in employment, housing, public accommodations and the provision of public assistance. Recent successes have made it possible for people with HIV to have access to organ transplants, for instance, and to parent their children without unwarranted court interference. And last year, advocates celebrated the lifting of a 22-year-old ban against people with HIV traveling or immigrating to the U.S., after years of urging Congress and four successive presidents to drop the discriminatory and medically unfounded ban.

IN A 2009 SURVEY, ONE OUT OF THREE RESPONDENTS THOUGHT HIV COULD BE TRANSMITTED THROUGH A DRINKING GLASS, TOILET SEAT OR SWIMMING POOL.



PRIVACY MATTERS

Because revealing an HIV diagnosis to the wrong person can have serious consequences, laws in most states now recognize the importance of protecting the privacy of HIV test results. (And, under federal law, *no one's* medical information is supposed to be shared without permission.) Yet violations of confidentiality are the second most common issue (after discrimination) addressed by cases on Lambda Legal's HIV docket.

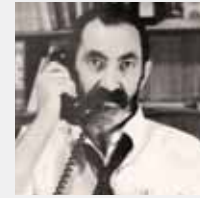
For instance, in *Cooper v. FAA* in 2007, a pilot's HIV status was shared between government agencies in violation of the federal Privacy Act, devastating the plaintiff personally. And in a separate incident last year, personal information belonging to 5,000 Medi-Cal recipients living with HIV was released by the California Department of Health Care Services (DHCS). It's not clear yet what the individual damage may have been from the DHCS's actions, but there is no doubting the seriousness of that violation—especially on such a large scale. Lambda Legal has continued to demand an explanation.

EXTRA PUNISHMENT

And finally, there are the HIV-related cases that bring the threads of Lambda Legal's work together, revealing that despite the many strides we have made, public policy in many parts of the United States continues to be rampantly antigay. One such example was *State of Kansas v. Limon*, an ACLU case decided by the Kansas Supreme Court in 2005, in which Lambda Legal wrote a brief that argued against giving a young man a greater sentence for having sex with an underage male than he would have received if the partner had been female. The state tried to rely on a public health "rationale" tying gay people's identities to HIV. That assertion had no medical basis whatsoever, and the Court agreed that the longer sentence was unlawful.

THE FIRST CASE

PEOPLE V. WEST 12 TENANTS CORP.
New York, 1983



Lambda Legal brought the nation's first challenge to HIV discrimination in the early 1980s, when HIV doctor **Joseph Sonnabend** was evicted from his office in New York

City's West Village by the coop board in his building. Sonnabend was among few doctors at that point who were willing to treat people with the mysterious new illness that was by then already beginning to kill a tragically high number of gay men and others.

Lambda Legal and the New York State's Attorney General alleged that the coop board was violating New York Human Rights Law and Civil Rights Law by discriminating against both Sonnabend and his patients on the basis of HIV disability.

A New York court issued a preliminary injunction in 1983 barring the eviction. The coop board appealed, but the parties eventually reached a settlement and the building allowed Dr. Sonnabend to carry on treating people with HIV—which he did for many years.

JUMPING WITHOUT A NET

MATTER OF MATTHEW CUSICK AND CIRQUE DU SOLEIL
Nevada, 2004

Lambda Legal won a record \$600,000 on behalf of gymnast Matthew Cusick over his dismissal from Cirque du Soleil for being HIV positive. When he was fired, Cusick, 32, had already put in several months preparing for his role in Cirque's popular Las Vegas production *Mystère* and had passed two company medical exams. The company's explanation? Firing Cusick was the "socially responsible" thing to do.

In a complaint filed with the federal Equal Employment Opportunity Commission, Lambda Legal alleged that Cirque du Soleil had violated the Americans with Disabilities Act by firing Cusick, because his performance of his job posed no health or safety risk to himself or anyone else.

The settlement included an agreement by Cirque du Soleil to change its HIV policies worldwide and provide employees with anti-discrimination training.

THANKS TO THE FRANKE SUIT, STAFF AT A NEARBY FACILITY WERE EDUCATED AND TRAINED ABOUT HIV. "I CAN'T TELL YOU HOW HAPPY THIS NEWS HAS MADE MY FATHER AND ME."

DETECTABLE PREJUDICE

Among Lambda Legal's current concerns in the HIV realm are the lines sometimes drawn between those with an undetectable HIV viral load and those with a detectable one. That was the problem in *Rose v. Cabee et al.*, which involved a woman with a detectable viral load who was denied gall bladder surgery by a doctor who said he was worried the virus might be transmitted to him or his staff (see page 5).

When this case was filed, Lambda Legal's HIV Project Director Scott Schoettes pointed out that such concerns had been addressed conclusively decades back: "Long ago, the Centers for Disease Control and Prevention established that using universal precautions—which are required in all sorts of medical situations, including surgeries—makes it extremely unlikely for the virus to be transmitted in this setting." And that statement is true regardless of the patient's HIV viral load. Ms. Rose's case was resolved out of court last year.

Another growing concern is the mistreatment of older Americans with HIV in long-term care, like the eviction of Dr. Franke in Arkansas. As more people with HIV survive into their senior years, these cases are cropping up more and more—further fueled in many instances by the homophobia and transphobia that is too common in these already isolating settings.

WRONGFUL PROSECUTION

In recent years, Lambda Legal has also observed an uptick in the number of prosecutions and sentence enhancements based on HIV status. One particularly shocking case known as *People v. Allen* involved an altercation between Michigan neighbors in which

prosecutors tacked on a bioterrorism charge because the fight involved biting and the accused allegedly had HIV. The case was thrown out after Lambda Legal and others presented commonly available scientific evidence that it would be almost impossible for saliva to transmit the HIV virus. Lambda Legal also objected to the absurdly HIV-phobic application of a terrorism law to a fight between neighbors.

Criminalizing behavior that would otherwise be completely legal—or enhancing a person's sentence for illegal conduct—simply because the person has tested positive for HIV, runs afoul of basic human rights and has no place in sound public health policy. Unfortunately, this type of discrimination is as old as Lambda Legal's fight on behalf of HIV-positive people—and as stubborn, it seems, as the virus itself. Like our colleagues in the medical field, however, who do not intend to stop fighting HIV until it is eradicated, we at Lambda Legal are fully committed to completely eliminating the stigma and discrimination that too often prevent people with HIV from leading full and fulfilling lives. **L**



UPDATED HIV REPORT
DOWNLOAD LAMBDA LEGAL'S REPORT, HIV STIGMA AND DISCRIMINATION IN THE U.S., AT: www.lambdalegal.org/fs_hiv-stigma-and-discrimination

SENIOR MOMENT

FRANKE V. PARKSTONE
Arkansas, 2010

Dr. Robert Franke, a 70-year-old retired professor and minister, relocated from Michigan



to Little Rock, Arkansas, in 2009 to live closer to his daughter, Sara Bowling. After an application process that included detailed medical information, Franke moved into an assisted living facility called Fox Ridge—but was evicted the next day when staff noticed his HIV status in his paperwork.

With the help of Lambda Legal, Franke and Bowling sued Fox Ridge. Although the case never went to trial, settling out of court in September 2010, it has raised awareness about this growing problem. In fact, Franke and his daughter were recognized for their contribution to the fight against HIV discrimination at a White House meeting in October 2010.

Bowling says the case has already had an impact in the Little Rock area. "Recently, I received an email from a friend who works at a living facility in town," she reports. "She told me that the staff was being educated and trained about HIV and that our case was described to the staff. I can't tell you how happy this news has made my father and me."

DIPLOMATIC DISPUTE

TAYLOR V. RICE

Washington, D.C., 2008

This five-year-long HIV discrimination case against the U.S. State Department finally came to an end when the department agreed to drop its policy of banning all HIV-positive applicants from serving overseas as Foreign Service Officers.

Lorenzo Taylor was barred from joining the Foreign Service because he had HIV. Lambda Legal represented Taylor by filing suit in federal court, alleging that the policy violated the Rehabilitation Act, which prohibits the federal government from discriminating against people with disabilities.

On a motion for summary judgment, the federal district court sided with the State Department's contention that an HIV-positive Foreign Service Officer (FSO) would have health needs—lab work and visits with HIV specialists, for instance—that the department would not be able to provide in every country across the globe. Lambda Legal appealed the district court's decision, and the U.S. Court of Appeals agreed with Lambda Legal that Taylor's claims had merit. Two weeks before trial on remand, the blanket ban against FSO applicants with HIV was lifted.



On the Defensive

Lambda Legal offers a crucial line of defense when antigay groups try to take away domestic partner rights, especially in states that ban marriage for same-sex couples—and leave them without basic legal protections.

By Christopher R. Clark, Senior Staff Attorney



Cancer survivor and plaintiff **Kathy Flores** (top, with partner and co-plaintiff **Ann Kendzierski**) says, "It's imperative my partner's rights be resolved in case I'm back in the hospital."

THE 43 RIGHTS LISTED in Wisconsin's Domestic Partnership Registry do not come close to providing the same protections as the 200 state law rights and over 1000 federal benefits of marriage, but that is what the antigay group Wisconsin Family Action is arguing in an attempt to destroy the Registry. In response, Lambda Legal is doing what we've done in other states that have amended their constitutions to prohibit marriage for same-sex couples: We're working to limit the scope of those amendments by making sure couples have access to basic legal protections for their families. In Wisconsin, we've defended this turf not once but twice.

Wisconsin Family Action's latest effort came in August 2010, when the group re-filed an earlier case arguing that the state's 2009 domestic partnership law violated the state's antigay constitutional amendment. Lambda Legal filed a motion to intervene on behalf of

Fair Wisconsin, a statewide organization that advocates for LGBT equality, as well as on behalf of five same-sex couples who need the basic legal protections that the registry provides. Our client, David Koptizke, who has been with his partner, Paul Klawiter, for nearly 40 years, explains: "Paul and I just want to make sure that we can visit each other in the hospital and take care of each other as we grow older."

This tug of war dates back to November 2006, when Wisconsin passed the constitutional amendment, which not only prohibits marriage for same-sex couples but also bars recognition of any legal status that is "substantially similar" to marriage. Three years later, the state legislature enacted a statewide

domestic partnership registry that gave same-sex couples who register as domestic partners limited, but important, legal protections such as the right to visit each other in the hospital and to take a family medical leave in the event one of them becomes ill. The law also allows for inheritance by one partner if the other partner dies without a will.

It was shortly after the Wisconsin registry went into effect in August 2009 that Wisconsin Family Action filed its first challenge—and attempted to circumvent the usual litigation process by filing the case directly with the Wisconsin Supreme Court. The governor had to appoint special counsel to represent the state in the case because the state's antigay attorney general refused to defend the registry.

Lambda Legal's request to the Wisconsin Supreme Court to intervene in the case was

accompanied by an argument that Wisconsin Family Action should not be permitted to bypass the trial court. The Court did weigh in, and the matter was dismissed. But now the challenge is back at the lower court.

THERE IS NO LEGAL OR FACTUAL BASIS

for Wisconsin Family Action's claim that the domestic partnership registry is unconstitutional. Arguments have been made that the registry creates a legal status "substantially similar" to marriage, but these are absurd. In fact, before the registry went into effect, the independent Wisconsin Legislative Council analyzed the registry and the rights it provided and issued an opinion stating that the registry was not in conflict at all with the ban on marriage for same-sex couples.

Wisconsin Family Action's attempt to strip same-sex couples of such basic rights as the ability to visit each other in the hospital is a mean-spirited attack on our community that Lambda Legal is determined to combat at every step. Lawsuits like this prove the emptiness of rhetoric from such antigay groups that they are "pro-family."

LAMBDA LEGAL SUCCESSFULLY

fended off a similar attack on same-sex couples recently in Ohio, which also has a constitutional amendment that prohibits same-sex couples from marrying. Enacted in 2004, it bars the state from recognizing any legal status that approximates marriage, much like Wisconsin's law. In 2009, the Cleveland City Council voted to create a domestic partnership registry for same-sex couples. While the registry itself conferred no rights on domestic partners, local employers are believed to use the registry as a basis for determining eligibility for health insurance and other company benefits provided to domestic partners.

continued on page 17



The Cost of Silence

Lambda Legal Executive Director **Kevin Cathcart** speaks with **Richard Cohen**, President of the Southern Poverty Law Center (SPLC), about youth suicides and SPLC's new documentary *Bullied*, featuring Lambda Legal plaintiff Jamie Nabozny.

KEVIN CATHCART: There are a couple of trends that have made it much harder for young people in schools today. One is that LGBT people are coming out earlier and earlier. That means kids are coming out in environments where they're surrounded by people who are perhaps less mature, and where everybody ends up more vulnerable. And the overall visibility of LGBT people today cannot be ignored. So if someone seems gay, people are more likely to think that they are.

COHEN: And after we achieve this great victory with *Lawrence v. Texas*, it's not a big surprise that there's a backlash.

Our "Teaching Tolerance" project was founded almost 20 years ago because we were concerned about hate groups and hate crime. We knew that part of the answer was to try to talk to children while they were young, talk to them in schools, give teachers classroom materials that

they could use to help us build a better democracy. We have always addressed LGBT issues in our magazine and in our classroom materials. But where we have gotten the most pushback from teachers and administrators has been on gay and lesbian issues.

More than a year ago we decided to do a film that addressed some of these topics.

It just so happened that when we finished the film, there was this incredible rash of publicity about gay teen suicides. Our timing was unfortunately quite good.

CATHCART: One of the things that has always been a mystery to me, in all our schools work—from the Nabozny case to the Pratt case that we're doing today—is that I don't understand the role of teachers and administrators in schools where bullying and violence is rampant. I know a lot of teachers. Nobody I know went into teaching in order to watch kids be tortured. And they also say to me when I ask, "This doesn't happen in my school." It never seems to happen anywhere until it's in the newspapers. There seems to be

School districts continue to support this so-called neutrality policy. But what they really mean is, don't say anything in support of LGBT rights.

a baseline notion that there are no gay students. And that allows harassment and violence to happen, and good people don't intervene, and policies aren't developed.

COHEN: I think that many teachers and school administrators are uncomfortable with this issue, and they'd rather not talk about it. They don't know exactly what to say. Maybe their school district hasn't taken a firm position. Society hasn't taken as clear a position as it should. So they are just not well equipped to deal with it, and sometimes it just gets ignored.

CATHCART: I am curious. How did you find Jamie Nabozny? How did you decide to do the film about his case?

COHEN: We chose a legal case because we wanted to put it in a justice framework. We looked at several cases, but Jamie's was the most compelling. In some ways, it was the *Brown v. Board of Education* of antigay bullying, because it was the first landmark case. Jamie's also very articulate. He's an excellent storyteller. And former Lambda Legal attorney David Buckel in some sense is the real star of the film. He speaks so eloquently and powerfully about Jamie's case. It's a great story, a triumphant story.

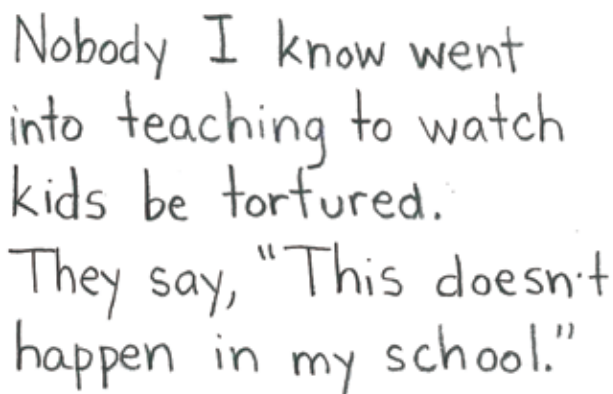
CATHCART: Jamie's case was enormously significant. There had never been anything like it. And because the settlement was so big, close to \$1 million, it caught people's attention. The way we do our impact work is not to bring case after case and try to represent everybody who has something bad happen to him or her. Our goal is to take cases that will have an impact and stop the behavior. And this case got the attention of school administrators—and also insurers and their lawyers.

And yet at the same time, we couldn't be sitting here having this conversation today if this had been the complete success that we wanted it to be. We wouldn't be having a rash of suicides, so many of them seemingly based on bullying in schools that has gone unaddressed.

COHEN: I think a real encouraging development has been the fact that the federal government is stepping up to the plate on anti-LGBT bullying. I think we're seeing something very real now.

CATHCART: I agree. And I hope that over the coming months, we're going to see a real difference. The "It Gets Better" videos have gone viral beyond anybody's imagination.

COHEN: We had a showing of the film in Minneapolis, adjacent to the Anoka-Hennepin School District that in many ways is ground zero in the battle against antigay bullying. Seven students committed suicide in the last year, four of whom safe-school advocates say were LGBT students. The school district claims it has a policy that explicitly talks about antigay bullying. On the other hand, they continue to support this so-called neutrality policy when it comes to what they consider curricular matters. Students and teachers have to be neutral on issues of sexual orientation, they say. But when you look at the examples that the school district has given to school administrators, what they really mean is, don't say anything in support of LGBT rights. And they're quite explicit about it. So the policy is neutral in theory, one-sided in fact, and of course, quite dangerous in practice. You know, Elie Wiesel said, "We must always take sides. Neutrality helps the oppressor, never the victim." We talk about stopping antigay bullying, yet we are fearful of saying anything that would seem to be supportive of the LGBT community because we're feeling pressure from the radical right.



Nobody I know went into teaching to watch kids be tortured. They say, "This doesn't happen in my school."

We issued a report of the hard-line antigay movement in our country to coincide with the release of the FBI statistics on hate crimes. One of the elements of our report is an examination of 14 years' worth of FBI data. It shows that the gay and lesbian community is far more likely than any other community to be victimized by hate crimes—twice as likely, for example, as African Americans or Jews. So this violence and harassment of gays and lesbians isn't confined to schools; it's something that exists across our country. Our society as a whole is a place where gay and lesbian people are vilified or marginalized in many ways. It's important to focus on the schools, because they are our future, and we have a duty to protect kids, but we have a lot of problems in society at large.


CATHCART: When politicians debate in Congress about whether or not it will destroy the military to have gay people there, or when

religious leaders talk about sin, and the schools respond by saying let's be "neutral"—there really should be no surprise that teens, who don't have any other power in the world, take these messages that they get from society and use their fists—or their computers.

COHEN: The hate movement in America is a barometer of unrest in society. Hate group activity has increased tremendously in the last decade. And that's fueled by and large by a backlash to the changing demographics of our country and the focus on undocumented persons and illegal immigration. There is no question that our diversity is an incredible source of strength, but we'd be Pollyannas to think that these changes are going to occur without some turmoil.

CATHCART: I agree with you completely. I think it's not just the demographic changes and the recession, but also the rising rates of income inequality in this country. Many people feel trapped in an economy that has no place for them. And sometimes it drives them to destructive behavior.

COHEN: I actually have more optimism on the issue of LGBT rights. There is a growing acceptance. It's the first time we have seen a majority of Americans favoring marriage rights for same-sex couples.

CATHCART: I am still very optimistic about the course of the LGBT rights movement. Despite many challenges, we continue to make progress. But I also think that the movement that I am so much a part of has not figured out how to make it work for all LGBT people, in all settings. How do you reach LGBT immigrants who are worried about their status and distrustful of mainstream authority figures and the law? If the penalty for reporting hate crimes is getting kicked out of the country, how can you be a plaintiff in a lawsuit? We're winning, and yet we need to figure out how to spread those victories more evenly across broader ranges of people, gay and straight. 

Constant Gardener

Nathaniel Wilson, Jr. (right) was a true southern gentleman—warm and dignified, with a keen, dry sense of humor. The Virginian’s life was rich and his experiences varied. He had a life-long love of airplanes, proudly serving his country in the Navy as an aeronautics specialist, and working for years for the Air Transport Association. He lived in Spain for several years while in the Foreign Service, and was fluent in both Spanish and French. During his retirement, Nat regularly traveled to New York, San Francisco, Santa Fe and beyond to share his passions for opera, the symphony and architecture with friends and family.



Nat was a heart transplant recipient. Despite his generally private nature, he was open about the impact that the donation had, giving him 13 additional years to live life to the fullest. Nat’s friends uniformly report the awe and inspiration they felt as they gathered for his annual transplant anniversary celebrations, cheering both the humbling, generous gift and how well Nat used it. He and his friend Larry Slagle, the only people they were aware of who were both gay and heart recipients, formed a mutual support group and were proud to share with others: “Donation works!”

In addition to volunteering as an ESL (English as a Second Language) teacher and for the Association for Retarded Citizens of Virginia, Nat was a long term civil rights activist. He served on the board of the ACLU of Virginia, and volunteered for both the Arlington Virginia Gay and Lesbian

Alliance and as a counselor for youth with Metro DC PFLAG (earning that group’s volunteer of the year award.) “He wanted gay people to have a better life, easier and with more acceptance, than what he went through as a young man,” says one of his best friends, Murray Bond.

“Nat wasn’t a front-page person, not at all splashy,” says his former life partner Stephen Nash. “He was the steady and persistent person willing to work for years to see results.” His good friend and fellow Arlington activist James Fisher adds, “He wanted to put his dollars to a good and effective use, and he went at it in a foundational way—looking for what he could support so that his investment in the organization would grow and mean something over time.” His support was both thoughtful and loyal. “He truly cared, in an ethical and moral way, about the groups he supported,” says Rhonda Buckner, who met Nat when she led

DC PFLAG. His many years of support as a major donor to Lambda Legal reflect that commitment.

One of Nat’s great loves was gardening, and he spent years cultivating a stunning garden surrounding his Arlington home. After Nat’s death, his sister Sue shared some of his plant cuttings with friends. “I now have these lovely Japanese bloodgrass and ferns,” Fisher says. “When you can walk around each year and see something that returns again and again to keep you company, something tied to someone you loved who is gone, it’s a tremendous comfort and wonderful remembrance.”

Nat’s generous bequest of over \$380,000 to Lambda Legal is also a gift that will sustain generations, supporting our fight for full equality for LGBT people and people living with HIV. We thank him, and miss him dearly. —*Judi O’Kelley, Director of Life Planning*

“On the Defensive,” continued from page 13

The Alliance Defense Fund, an antigay legal group, filed a lawsuit against the city saying *any* governmental recognition of same-sex couples was an “approximation” of marriage and thus a violation of Ohio’s constitutional amendment. The trial court dismissed the case because of binding precedent, but the Alliance Defense Fund and their client, a local antigay group called Cleveland Taxpayers for the Ohio Constitution, appealed to the Court of Appeals, Eighth Appellate District. The Court unanimously affirmed the lower court’s dismissal, declaring, “Any legally established relationship bearing less than all the attributes of marriages is constitutional.”

Indeed, Cleveland’s domestic partnership registry is important and meaningful for those who benefit from it, but it cannot approximate marriage unless it provides the extensive legal structure that protects married couples’ families. The state’s antigay amendment should in no way restrict Ohio cities from helping same-sex couples obtain health insurance benefits.

THE CLEVELAND DECISION IS especially important because the Court recognized that the legal status of marriage is “exceptional.” Citing the friend-of-the-court brief that Lambda Legal submitted in defense of the registry, the Court noted the difficulty of arguing that “domestic partnership” could ever equate to marriage:

As stated in our amicus brief, the term “domestic partner” completely lacks the social and emotive resonance of “husband” and “wife.” Domestic partnerships are not given the same respect by society as a married couple, and they share none of marriage’s history and traditions.

This compelling logic has direct application to the domestic partner challenge in Wisconsin. As Lambda Legal advances its defense of the Wisconsin registry, we will urge the Wisconsin court to reach a similar conclusion: that constitutional amendments prohibiting marriage for same-sex couples have no bearing at all on laws providing LGBT families with limited, but important domestic partnership protections. **L**



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BREAKING THE CYCLE



JON W. DAVIDSON

FOR A FEW WEEKS THIS FALL, the media was full of stories about a string of suicides of LGBT youth. Sadly, the loss of those lives was but the tip of an iceberg. It is estimated that 1,500 LGBT young people commit suicide each year, at a rate believed to be three to four times higher than their heterosexual peers.

Many of the teens whose suicides were reported had been victims of harassment and violence at their schools. According to GLSEN's 2009 National School Climate Survey, 85 percent of LGBT youth were verbally harassed in the prior year because of their sexual orientation and 64 percent because of their gender expression. Forty percent were physically harassed (by acts such as shoving) due to their sexual orientation and 27 percent due to their gender expression. Frighteningly, 18 percent were physically *assaulted* (including being punched, kicked or injured with a weapon) because of their sexual orientation and more than 12 percent because of their gender expression.

LAMBDA LEGAL HAS PROSECUTED LAWSUITS TO HOLD SCHOOLS RESPONSIBLE FOR FAILING TO PROTECT LGBT STUDENTS AND FOR INTERFERING WITH THEIR RIGHTS OF EXPRESSION.

LGBT students who experienced high levels of in-school victimization were more likely than other students to skip school, have lower grade point averages, and decide not to pursue further education. They also were several times more likely than their peers to feel unsafe, to turn to substance abuse, and to have lower self-esteem, greater anxiety, and higher levels of depression, all of which can contribute to suicide.

There are things that can be done to break this cycle. Lambda Legal has prosecuted lawsuits in California, Indiana, Nevada, New Jersey, New York, Texas, Wisconsin and Utah to hold schools responsible for failing to protect LGBT students and for interfering with their rights of expression. These suits not only have sought to obtain justice for our clients but also to reform the policies and practices of the school districts we've sued and to send a message to other schools that failing to take appropriate action is both harmful *and* expensive. We also have produced resources such as our *Out, Safe & Respected* toolkit and our companion

materials for educators and parents. We further have helped craft school policies to address harassment and bias-based assaults, including one recently adopted in Dallas.

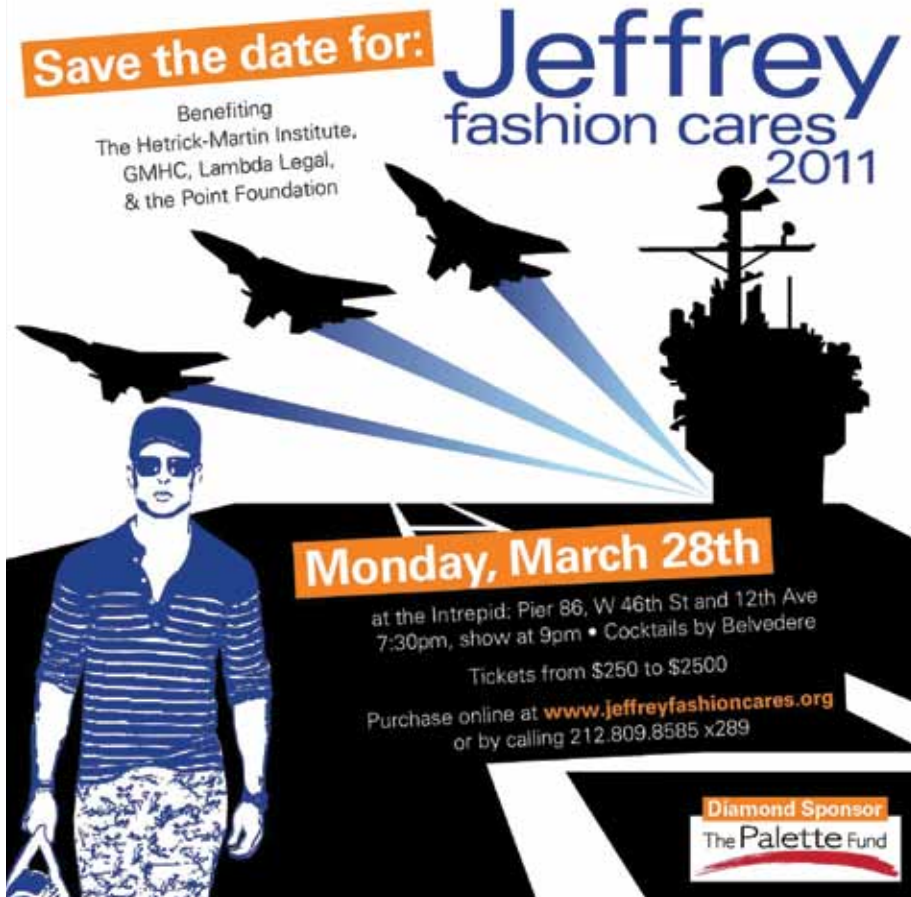
One of the challenges faced in securing protective legislation and policies is opposition to listing sexual orientation and gender identity and expression as prohibited bases for harassment on the theory that such conduct is wrong regardless of the target. This ignores the Supreme Court's teachings in Lambda Legal's *Romer v. Evans* case that "Enumeration is the essential device used to make the duty not to discriminate concrete and to provide guidance for those who must comply." Research confirms this. Students in states whose laws do not identify prohibited grounds for bullying have turned out to be no more protected than students who live in states without any anti-harassment laws at all. By contrast, students whose schools have a policy that specifically includes sexual orientation and gender identity and expression report feeling more safe than others and have fewer instances of serious harassment at their schools.

We must not allow the suicide reports of this fall to be obscured. We need to keep reminding people that LGBT students are bullied more than twice as often as any other group, with horrific consequences. We need to fight for laws and school policies that do not hide that fact by adopting generic approaches. Doing less continues to make LGBT youth invisible and less protected. As the judge who ruled in Lambda Legal's *Colin* case concluded, how schools deal with LGBT issues "may involve the protection of life itself."

A handwritten signature in blue ink that reads "Jon W. Davidson". The signature is fluid and cursive, written in a professional style.

Save the date for: **Jeffrey**
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